IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.5523 OF 2005

Mr.Kochikkaran Velayudhan Viswambharan : Petitioner

V/s.

District Deputy Registrar of Cooperative Societies, Thane & Ors. : Respondents

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Mr.S.A.Bhalwal i/b. Vyas & Bhalwal for the petitioner.

Mr.R.S. Apte for the respondent no.2.

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CORAM : S.A. BOBDE, J.

August 25, 2005.

P.C.:

1. Rule, returnable forthwith.

Mr.Apte, the learned counsel appears, and waives service of rule on behalf of the respondent no.2.

Heard by consent.

2. The petitioner has challenged the order of the Divisional Deputy Registrar rejecting his revision on the ground that he has failed to deposit 50% of the amount as required under section 154(2A) of the Maharashtra Co-operative Societies Act, 1960, hereinafter referred to

as the "Act".

3. Mr.Bhalwal, the learned counsel for the petitioner, submitted that the petitioner is only a guarantor and has not been served in the recovery proceedings. He also faintly suggested that a copy of the Recovery Certificate has also not been served on the petitioner. It is not possible to entertain the argument that he was not served with the Recovery Certificate, in view of the petitioner's prayer in the revision application which reads as under:-

> "a) That this Hon'ble Court be pleased to issue a Order or Direction, calling for the records and proceedings of demand notice and Recovery Certificate dated 8.11.2004 and 19.11.2004 filed by respondent No.2 under section 101 of the Maharashtra Cooperative Societies Act, 1960 and after perusing the legality and validity of the same be pleased to quash and set aside the impugned attachment orders dated 6.6.2005 and the Demand Notice and Recovery Certificate dated 8.11.2004 and

19.11.2004 being Exhibits "F" hereto."

4. The learned further submitted that the petitioner is not liable to pay the entire sum as demanded in the Recovery Certificate since the respondents have already recovered a part of the dues. This is a matter which may be agitated in the revision. It is clear from section 154(2A) of the Act that what is required to be taken into account is the recoverable dues under certificate under section 101.

5. In this view of the matter, the order does not call or any interference. The rule is discharged. This shall not foreclose the petitioner’s remedy which he may take against the attachment of his property.

S.A. BOBDE, J.